

PT 00-42

Tax Type: Property Tax

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

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|----------------------------------|---|-----------------------|---------------------------|
| NEW COMMUNITY CHURCH |) | | |
| |) | A.H. Docket # | 99-PT-0047 |
| Applicant |) | | |
| |) | Docket # | 98-86-1 |
| v. |) | | |
| |) | Parcel Index # | 09-19-301-009-0060 |
| THE DEPARTMENT OF REVENUE |) | | |
| OF THE STATE OF ILLINOIS |) | | |

RECOMMENDATION FOR DISPOSITION

Synopsis:

The hearing in this matter was held at the Willard Ice Building, 101 West Jefferson Street, Springfield, Illinois, on April 5, 2000, to determine whether or not Scott County Parcel Index No. 09-19-301-009-0060 qualified for exemption from real estate tax for all or part of the 1998-assessment year.

Mr. Donald Howard, a trustee of the New Community Church (hereinafter referred to as the "Church" or the "Applicant"), Mrs. Shirley I. Cox, secretary of the Church, and Mr. Kenneth T. Cox, a trustee of the Church were present and testified on behalf of the Church.

The issues in this matter include: first, whether the Church is a religious organization; secondly, whether the Church used this parcel for religious purposes during the entire 1998-assessment year; and finally whether this parcel was leased or otherwise used for profit during the period January 1, 1998, through August 6, 1998. Following the submission of all of the

evidence and a review of the record, it is determined that the Church is a religious organization. It is further determined that during the period January 1, 1998, through August 6, 1998, the parcel here in issue and the church building thereon were owned by Kenneth T. Cox, a trustee of the Church. It is also determined that on August 6, 1998, Kenneth T. Cox and Shirley I. Cox, husband and wife, conveyed this parcel and the church building thereon to the Church. In addition, it is determined that during the entire 1998-assessment year this parcel and the church building thereon were used for religious purposes. Finally it is determined that this parcel and the building thereon were not leased or otherwise used for profit during the period January 1, 1998, through August 6, 1998.

It is therefore recommended that in view of the fact that Scott County Parcel Index No. 09-19-301-009-0060 was used by a religious organization for religious purposes during the entire 1998-assessment year, that said parcel qualified for exemption from real estate taxation for the entire 1998-assessment year.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that Scott County Parcel Index No. 09-19-301-009-0060 qualified for exemption from real estate taxation for 41% of the 1998-assessment year was established by the admission in evidence of Department's Exhibit Nos. 1 through 2P.

2. Mr. Howard testified that he had been present at the pretrial conference held in this matter and recalled that the Administrative Law Judge had advised those present on behalf of the Church that it would be appropriate for the Church to be represented by legal council at the hearing. This matter was discussed by the members of the Church at a church business meeting and it was decided that the Church could not afford to have an attorney present at the hearing, but wished to proceed to hearing without counsel. (Tr. pp. 8 & 9)

3. On November 27, 1996, this parcel and the church building thereon were sold at public auction by the Christian Church of Glasgow. The day before the sale several local

residents who were interested in maintaining a church presence in the town of Glasgow got together to discuss the impending sale. At this meeting Kenneth T. Cox, who was later elected a trustee of the Church, agreed to buy the parcel and the building and John Brown, who also was later elected a trustee, agreed to purchase various furniture and fixtures necessary to operate a church. (Dept. Ex. No. 2C, Tr. p. 19)

4. At the auction sale Kenneth T. Cox purchased the parcel here in issue for the price of \$21,000.00 and John Brown purchased some of the pews, a piano, an organ, and some chairs. (Tr. p. 19, Dept. Ex. No. 2C)

5. On December 16, 1996, the trustees of the Glasgow Christian Church conveyed this parcel and the building thereon to Kenneth T. Cox. (Appl. Ex. No. 4)

6. The front of the church building contains a men's restroom, a women's restroom, and a fellowship hall. The fellowship hall is used on Sunday mornings for welcoming the congregation and on Wednesday evenings for bible study for adults and children. Behind the fellowship hall is the church sanctuary which is used for worship services on Sunday mornings and choir practice on Wednesday evenings. (App. Ex. Nos. 1 & 2)

7. The first religious service was held by the Church in the building on this parcel on December 9, 1996. (Tr. pp. 15 & 16)

8. On December 15, 1997, the Church filed an Affidavit of Incorporation pursuant to the Religious Corporation Act, 805 ILCS 110/0.01 *et seq.*, with the recorder of deeds of Scott County. (Appl. Ex. No. 3)

9. During the calendar year 1998 there were approximately 16 members of the Church. The attendance at worship services during 1998 ranged from 20 people to about 35 people. (Tr. p. 15)

10. During 1998, Sunday morning worship services were held at 10:00 A.M. There also were Wednesday evening Bible studies held at the church during 1998. (Tr. p. 15)

11. During the time that Kenneth T. Cox owned the parcel here in issue, from December 16, 1996, through August 6, 1998, the Church did not pay any rent or make any other payments

to Mr. Cox concerning the right to use the building on this parcel. (Tr. p. 16, Dept. Ex. No. 2C)

12. During the time that Mr. Cox owned this parcel the Church paid the utility bills to the utility. (Tr. p. 16, Dept. Ex. No. 2I)

13. On August 6, 1998, Kenneth T. Cox and Shirley I. Cox conveyed this parcel and the building thereon to the Church for \$17,000.00. The Church made a down payment of \$5000.00 and executed a promissory note to Mr. and Mrs. Cox to pay the remaining \$12,000.00 along with 5% interest over the next 10 years. (Appl. Ex. Nos. 5 & 6)

14. I take Administrative Notice of the Department's determination in Docket No. 98-86-1, which is the decision in this matter in which the Department granted an exemption to the Church for 41% of the 1998-assessment year. The Department has consequently determined that the Church is a religious organization and that this parcel qualified for exemption during a portion of the 1998-assessment year. The portion of the 1998-assessment year for which the Department determined that the Church qualified for exemption was the portion of the year when the Church owned it, namely from August 6, 1998, through December 31, 1998. (Dept. Ex. No. 2K)

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Concerning property used for religious purposes, 35 **ILCS** 200/15-40 provides in part as follows:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, . . . not leased or otherwise used with a view to profit, is exempt,

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). It is therefore clear that the burden of proof in this matter is on the Church.

I take Administrative Notice of the Department's decision in this matter in which it was determined that the Church is a religious organization which used this parcel for religious purposes during the period when the Church owned it.

A religious purpose pursuant to the constitutional provision concerning exemption from taxation is a use of property by a religious society or organization as a place for worship, Sunday schools, and religious instruction. People ex rel. McCullough v. Deutsche Gemeinde, 249 Ill. 132 (1911). The evidence clearly showed that after December 14, 1997, Kenneth T. Cox was a trustee of the Church as well as the owner of this parcel and the church building. Mr. Cox allowed the church to use this parcel and the building thereon for religious worship, and Wednesday evening prayer meeting, and did not charge the Church any rent or user fee. I therefore conclude that both the fellowship hall and the church sanctuary were used for religious purposes by a religious organization.

Since Mr. Cox, a trustee of the Church, did not charge the Church rent to use the building on this parcel, and since he sold this parcel to the Church for \$4,000.00 less than he paid for it, it cannot be said that he was leasing or otherwise using this parcel for profit. See American National Bank v. Department of Revenue, 242 Ill.App.3d 716 (2nd Dist. 1993), and Victory Christian Church v. Department of Revenue, 264 Ill.App.3d 919 (1st Dist. 1994).

I therefore conclude that Scott County Parcel Index No. 09-19-301-009-0060 and the building thereon qualified for exemption during the entire 1998-assessment year as being used for religious purposes, and not leased or otherwise used for profit.

I therefore recommend that Scott County Parcel Index No. 09-19-301-009-0060 and the building thereon be exempt from real estate taxation for the entire 1998-assessment year.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
August 25, 2000